

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Wednesday, August 20, 2003 – 9:00 a.m. – Room 416 State Capitol

Members Present:

Rep. David Ure, House Chair
Sen. Howard A. Stephenson, Senate Chair
Sen. Mike Dmitrich
President Al Mansell
Sen. Ed Mayne
Sen. Michael G. Waddoups
Rep. Judy A. Buffmire

Rep. James R. Gowans
Rep. Merlynn T. Newbold
Speaker Martin R. Stephens

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Susan Creager Allred, Associate General Counsel
Ms. Cassandra N. Bauman, Legislative Secretary

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary at 538-1032.

1. Committee Business

Chair Stephenson called the meeting to order at 9:17 a.m.

MOTION: Sen. Dmitrich moved to approve the minutes of the August 6, 2003 meeting. The motion passed unanimously with President Mansell and Speaker Stephens absent for the vote.

2. R612-2-22 Medical Records

Ms. Joyce Sewel, Director, Utah Labor Commission, distributed and reviewed "Access to Medical Information for Use in the Utah Workers' Compensation System."

Ms. Catherine J. Dupont, Associate General Counsel, Office of Legislative Research and General Counsel, explained that workers' compensation is exempt from HIPAA (Health Insurance Portability and Accountability Act) and therefore state law regulates workers' compensation.

Ms. Leslie Castle, nurse, expressed concern that workers' compensation insurers are able to access unrelated medical records. She indicated that she contracted whooping cough at work and that accessing previous medical records was not necessary to determine if the illness was preexisting. She indicated that the insurer believed she had contracted whooping cough from her daughter and her daughter's medical records were accessed.

Mr. R. Chet Loftis, General Counsel, Utah Medical Association, suggested that the rule ought to be revised. He indicated that a working group has drafted some language that will be suggested to the Labor Commission.

Mr. Kevin Lawlor and Ms. Mary Thomason, IHC (Intermountain Health Care), recognized that workers' compensation insurers need to have access to medical records, but that some limitations and restrictions should be established in the rule for a patient's privacy. Ms. Thomason explained that employee health records are not covered by HIPAA and that health care providers who are self-insured complicate the issue because of the allowed access to health records and medical records. They responded to questions.

Mr. Sterling Farr and Mr. Elliot Morris, Workers' Compensation Fund, distributed "HIPAA & Utah Workers' Compensation" (prepared by IHC). They explained the circumstances behind the necessity to receive medical records for preexisting conditions which are both related and unrelated to workers' compensation injuries. They responded to questions. They requested that Subsection (d) on page 5 of the handout include "compensability" of the workplace injury.

Mr. Edward Havas, President, and Mr. David Parker, Utah Trial Lawyers' Association, expressed concern for the workers' right to privacy and the right to a speedy adjudication of their claims. They indicated that injured workers are intimidated and have concerns regarding their legal rights in workers' compensation claims and therefore, many contact an attorney to represent them in those claims.

Mr. Alan Hennibold, Labor Commission, explained that if statute or the rule provided for reasonable or related medical records to be released, it would be difficult for the Labor Commission to determine in each case which records are reasonable or related. He indicated that the process may delay claims or increase the process.

MOTION: Speaker Stephens moved to sunset the rule and have staff report in the next meeting whether the Labor Commission has statutory authority to promulgate the rule. The motion passed unanimously with President Mansell absent for the vote.

Sen. Mayne distributed copies of correspondence regarding HIPAA and the workers' compensation system. He explained that the document labeled "High Priority" is the document which the Department of Health sent to the Labor Commission in response to the rule. He expressed concern with the proposed rule changes and their impact on the privacy rights of patients.

3. Utah Rulemaking: An Historical Perspective

Chair Stephenson expressed appreciation for the Division of Administrative Rules and the executive branch's involvement in the administrative rulemaking process.

Mr. Ken Hansen, Director, Division of Administrative Rules, introduced his staff and explained each of their roles in the administrative rulemaking process. He distributed and reviewed "Improvements in Rulemaking."

Mr. Kent Bishop, Governor's Office of Planning and Budget, stated that the Division of Administrative Rules has great staff and expressed how much he appreciates their work.

4. Other Items / Adjourn

Future meetings are tentatively scheduled for Tuesday, September 9 and Wednesday, September 24, 2003 at 9:00 a.m.

Rep. Newbold requested that staff study the Department of Health's involvement with medical records and which records are accessible to the Department.

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MOTION: Sen. Waddoups moved to adjourn the meeting. The motion passed unanimously with Sen. Dmitrich, President Mansell, and Speaker Stephens absent for the vote.

Chair Stephenson adjourned the meeting at 11:34 a.m.